

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

state law counterclaims to proceed, but finding that Defendants' inequitable conduct allegations did not meet Rule 9(b)'s heightened pleading standard. D.E. 220. Therefore, the Court dismissed Defendants' inequitable conduct counterclaims without prejudice and granted Defendants leave to amend their pleadings on or before September 16, 2011. *See id.* at 27.

Defendants believe that additional factual bases supporting their inequitable conduct defenses will be developed through discovery, and, thus, reserve their rights to amend their inequitable conduct defenses after obtaining this discovery. The parties have agreed that, pursuant to local practice in patent cases, "[d]iscovery is permitted with respect to . . . defenses of patent invalidity or unenforceability not pleaded by a party, where the evidence needed to support these claims or defenses is in whole or in part in the hands of another party." D.E. 167 at 2-3. Thus, to the extent that Defendants discover additional factual bases supporting their inequitable conduct defenses, they will seek leave to amend their pleadings at the appropriate time and in accordance with the Federal Rules. *See* Fed. R. Civ. P. 15(a)(2) (After the time to amend a pleading as a matter of course expires, "a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.")).

Respectfully submitted,

Dated: September 16, 2011

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CERTIFICATE OF SERVICE

I, Jeffrey G. Randall, hereby certify that on September 16, 2011, I caused a true and correct copy of the foregoing NOTICE REGARDING THE BARCLAYS AND UBS DEFENDANTS' INEQUITABLE CONDUCT COUNTERCLAIMS AND DEFENSES to be served by electronic filing using the CM/ECF system upon:

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